

1 Michael Liu Su (SBN 300590)
michael.liu.su@finnegan.com
2 **FINNEGAN, HENDERSON, FARABOW,**
3 **GARRETT & DUNNER, LLP**
3300 Hillview Avenue
Palo Alto, California 94304
4 Telephone: (650) 849-6600
Facsimile: (650) 849-6666

5
Lionel M. Lavenue (*pro hac vice to be filed*)
6 lionel.lavenue@finnegan.com
7 **FINNEGAN, HENDERSON, FARABOW,**
8 **GARRETT & DUNNER, LLP**
1875 Explorer Street, Suite 800
Reston, VA 20190-6023
9 Telephone: (571) 203-2750
Facsimile: (571) 203-2777

10 David K. Mroz (*pro hac vice to be filed*)
david.mroz@finnegan.com
11 **FINNEGAN, HENDERSON, FARABOW,**
12 **GARRETT & DUNNER, LLP**
901 New York Avenue, N.W.
Washington, DC 20001-4413
13 Telephone: (202) 408-4000
Facsimile: (202) 408-4400

14 *Attorneys for Amici Curiae Monolithic Power*
15 *Systems Inc., Engine Advocacy, and*
16 *ACT | The App Association*

17 **UNITED STATES DISTRICT COURT**
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
SAN JOSE DIVISION

19 APPLE INC., CISCO SYSTEMS, INC.,
20 GOOGLE LLC, INTEL CORPORATION,
EDWARDS LIFESCIENCES
21 CORPORATION, and EDWARDS
LIFESCIENCES LLC,

22 Plaintiffs,

23 v.

24 ANDREI IANCU, in his official capacity as
25 Under Secretary of Commerce for Intellectual
Property and Director, United States Patent
and Trademark Office,

26
27 Defendant.

Case No. 20-cv-6128-EJD

MOTION FOR LEAVE TO FILE BRIEF
***AMICUS CURIAE* OF MONOLITHIC**
POWER SYSTEMS, INC.; ENGINE
ADVOCACY; AND ACT | THE APP
ASSOCIATION IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

Date: March 11, 2021
Time: 9:00 AM
Location: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

1 *Amici curiae* Monolithic Power Systems, Inc. (“MPS”); Engine Advocacy; and ACT | The
 2 App Association hereby requests permission to file the attached *amici curiae* brief in support of
 3 Plaintiffs’ Motion for Summary Judgment. Counsel for the *amici curiae* has reviewed Plaintiffs’
 4 motion in this action and believes it can assist the Court in resolving key issues raised in the motion:
 5 (1) whether the *NHK-Fintiv* rule exceeds the Director’s statutory authority under the Leahy-Smith
 6 America Invents Act; (2) whether the *NHK-Fintiv* rule is arbitrary and capricious and an abuse of
 7 discretion in violation of the APA; and (3) whether the Director exceeded his authority and violated
 8 the AIA by adopting the *NHK-Fintiv* rule without notice-and-comment rulemaking.

9 *Amici curiae* are companies and organizations that interact extensively with the patent system
 10 and relies upon a robust patent system in order to protect their proprietary and legal interests. The
 11 disposition of the case will have lasting impacts on *amici curiae*’s proprietary and legal interests, and
 12 on the interests of others in the industry because it makes it harder for *amici curiae* to invalidate bad
 13 patents covering prior-art designs through the IPR process. This, in turn, allows nuisance patent
 14 holders to slow *amici curiae*’s innovative progress by causing unnecessary litigations over patents
 15 that never should have issued in the first place—which is what the IPR statute was intended to
 16 protect against.

17 The proposed *amicus curiae* brief attached to this motion elaborates on this, supplementing
 18 the Plaintiffs’ motion and hopefully aiding this Court in making its decision on the same.
 19 Accordingly, *amici curiae* respectfully requests leave to file this attached *amicus* brief. Plaintiffs
 20 have consented to the filing of this brief.

21
 22
 23 Dated: December 3, 2020

FINNEGAN, HENDERSON, FARABOW,
 GARRETT & DUNNER, LLP

24
 25 By: /s/ Michael Liu Su
 26 Michael Liu Su
 27 Attorneys for *Amici Curiae Monolithic Power*
 28 *Systems Inc., Engine Advocacy, and*
ACT | The App Association